

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition No.: 30-018-16-1-5-01391-17
Petitioner: AMH 2015-2 Borrower, LP
Respondent: Hancock County Assessor
Parcel No.: 30-01-24-203-023.000-018
Assessment Year: 2016

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioner initiated its 2016 appeal with the Hancock County Assessor on June 14, 2016.
2. On August 17, 2017, the Hancock County Property Tax Assessment Board of Appeals (PTABOA) issued its determination lowering the assessment but not to the level requested by the Petitioner.
3. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board, and elected the Board's small claims procedures.
4. The Board issued a notice of hearing on October 19, 2017.
5. Administrative Law Judge (ALJ) Patti Kindler held the Board's administrative hearing on December 18, 2017. She did not inspect the property.
6. Certified tax representative Jeremy Miller appeared for the Petitioner and was sworn as a witness. Attorney Brian Cusimano appeared for the Respondent. County Assessor Mary Noe was sworn as a witness for the Respondent.

Facts

7. The property under appeal is a single-family rental property located at 5851 West Deerview Bend in McCordsville.
8. The PTABOA determined the 2016 total assessment is \$179,000 (land \$37,000 and improvements \$142,000).
9. At the hearing, the Petitioner's representative requested a total assessment of \$168,300.

Record

10. The official record for this matter is made up of the following:

- a) Form 131 with attachments,
- b) A digital recording of the hearing,
- c) Exhibits:

Petitioner Exhibit 1:	Memorandum from the Department of Local Government Finance (DLGF) entitled “Gross Rent Multiplier (GRM) Income Approach to Value on Single-family and Small Multi-family Properties,” dated November 20, 2003,
Petitioner Exhibit 2:	Memorandum from the DLGF entitled “Appeals,” dated August 24, 2007,
Petitioner Exhibit 3:	2011 Real Property Assessment Manual pages 2 and 3,
Petitioner Exhibit 4:	Sales disclosure form for the subject property dated February 13, 2015,
Petitioner Exhibit 5:	GRM analysis and calculation for 1/1/2012 to 1/1/2016.
Respondent Exhibit A:	Respondent’s burden analysis,
Respondent Exhibit B:	Subject property record card,
Respondent Exhibit C:	PTABOA worksheet,
Respondent Exhibit D:	Petitioner’s GRM analysis including Assessor’s handwritten data,
Respondent Exhibit E1:	Paired sales analysis summary sheet,
Respondent Exhibit E2:	Paired sales analysis,
Respondent Exhibit E3:	Sales disclosure forms for the following properties: 8685 North Commonview Drive, 8717 North Commonview Drive, and 5684 West Woodview Trail,
Respondent Exhibit F:	Sales disclosure form for the subject property dated February 13, 2015,
Respondent Exhibit G:	Revised calculation of the Petitioner’s GRM.
Board Exhibit A:	Form 131 with attachments, including Power of Attorney for Mr. Miller,
Board Exhibit B:	Hearing notice dated October 19, 2017,
Board Exhibit C:	Hearing sign-in sheet,
Board Exhibit D:	Notice of Appearance for Mr. Cusimano.

- d) These Findings and Conclusions.

Contentions

11. Summary of the Petitioner's case:

- a) The property's assessment is too high. The property was purchased to be used as a rental property, as the sales disclosure form confirms. Assessing officials are required to develop and apply a GRM to assess small rental properties. An appropriate GRM is computed by dividing a property's sale price by its rental income. *Miller argument; Pet'r Ex. 1, 2, 3, 4.*
- b) In support of his argument, Mr. Miller presented a GRM analysis utilizing five single-family rental properties, including the subject property. The five properties are all located in Emerald Springs. Four of the properties, including the subject property, sold in 2015.¹ The other property, located at 5659 Woodview Trail, sold in 2013. According to Mr. Miller, this analysis is the best approach to value the property, because it utilizes sales and rental data from properties located in the subject property's neighborhood. *Miller testimony; Pet'r Ex. 5.*
- c) In order to develop his GRM, Mr. Miller utilized sale prices and rental income data for the properties. The income data came from various sites, including his company's files, the Brokers Listing Cooperative (BLC), and Zillow.com. Mr. Miller divided the sale prices of the five properties by their rental incomes to arrive at an average GRM of 101. He then multiplied the subject property's monthly rent of \$1,650 by the GRM of 101 for an estimated market value-in-use of \$168,300. During closing argument, Mr. Miller stated that he would "be okay with" a GRM of 106 and a total assessment of \$174,900. *Miller testimony; Pet'r Ex. 5.*
- d) The Respondent's evidence is flawed. In determining trending factors, the Respondent erroneously included "homestead properties" when she should have only utilized rental properties. *Miller argument (referencing Resp't Ex. C, D, E).*

12. Summary of the Respondent's case:

- a) The subject property is assessed correctly. The Petitioner attacked the methodology used by the Assessor to determine the property's assessment. Initially, the Assessor could not value the property as a rental property because the Petitioner had not provided rental income data. After the Petitioner filed an appeal, the PTABOA valued the property using the GRM method based on rental income data provided by the Petitioner's representative for several rental properties under appeal. *Cusimano argument; Resp't Ex. B, C.*
- b) The PTABOA relied on two sales of rental properties in the subject property's neighborhood to develop a GRM. The PTABOA analyzed each properties' age, square footage, sale price, and rental rate. To trend the sales to the proper valuation

¹ The subject property sold in February of 2015, but it appears Mr. Miller relied on an earlier sale of the subject property that occurred in December of 2014.

date, the PTABOA developed, and relied on, a paired sales analysis. Based on this paired sales analysis, it was determined that the neighborhood values and rental rates “trended upward.” Based on these sales and the Petitioner’s rental income data, the PTABOA determined the appropriate GRM was 109. *Noe testimony; Resp’t Ex. C, D, E.*

- c) The Petitioner’s analysis lacks support. Mr. Miller did not independently confirm the sales and rental data that came from sources outside his company’s files. Additionally, Mr. Miller computed a much different GRM for the subject property when compared to his purportedly comparable properties. This fact leads to a conclusion that the properties are not actually comparable. Finally, Mr. Miller listed the sales price of the subject property at \$128,000 based on a December 18, 2014, sale. However, according to the Petitioner’s sales disclosure form, the subject property sold on February 13, 2015, for \$165,000. *Cusimano argument (referencing Pet’r Ex. 4); Resp’t Ex. F, G.*

Burden of Proof

13. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass’r*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.
14. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
15. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and has application to all appeals pending before the Board.
16. Here, the total assessed value decreased from \$180,300 in 2015 to \$179,000 in 2016. The Petitioner’s representative failed to offer any argument that the burden should shift to the Respondent. Accordingly, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply and the burden remains with the Petitioner.

Analysis

17. The Petitioner failed to make a prima facie case for reducing the assessment.
- a) Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
 - b) Regardless of the method used, a party must explain how its evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2016 assessment, the valuation date was January 1, 2016. Ind. Code § 6-1.1-2-1.5.
 - c) In an effort to prove the 2016 assessment was incorrect, the Petitioner introduced a GRM analysis. Indiana law provides that the GRM method is the *preferred* method of valuing real property that has one (1) to four (4) rental units. *See* Ind. Code § 6-1.1-4-39(b) (emphasis added). But the burden still remains with the Petitioner to prove what the correct assessment should be.
 - d) The GRM method eliminates the complex value adjustments required by the sales-comparison approach by assuming differences between the properties are reflected in their respective rental rates. However, to derive and apply a reliable GRM for valuation purposes, the properties analyzed must still be comparable to the subject property and to one another in terms of physical, geographic, and investment characteristics. To establish that properties are comparable, a party must identify the characteristics of the subject property and explain how those characteristics compare to the purportedly comparable properties. *Long*, 821 N.E. 2d at 471. Specific reasons must be provided as to why a proponent believes a property is comparable. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of two properties. *Id.* at 470.
 - e) Here, Mr. Miller failed to adequately compare his purportedly comparable properties with the subject property. Based on his selection of purportedly comparable properties, located in subject property’s neighborhood of Emerald Springs, the Board may be able to assume the properties are similarly situated. Beyond that, the Petitioner’s evidence fails to provide any analysis of the comparability of the properties. For example, the properties vary significantly in size, but Mr. Miller failed to make any adjustments to account for the likely differences in rental rate per

square foot. Further, Mr. Miller relied on at least two sales that occurred more than a year before the relevant valuation date, but he did not trend the data or explain how it was relevant.² Mr. Miller's comparison falls short of the level of comparison required by *Long*.

- f) The Board also tends to agree with the Respondent that not all of Mr. Miller's data sources are reliable. Indeed, Mr. Miller conceded he did not verify the amounts and terms of sales he obtained from sources other than his own company's files.
- g) Consequently, the Petitioner failed to make a prima facie case for reducing the assessment. Where the Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

18. The Board finds for the Respondent.

Final Determination

In accordance with these findings and conclusions, the 2016 will not be changed.

ISSUED: April 18, 2018

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

² There is evidence on the record that the Petitioner purchased the subject property on February 13, 2015, for \$165,000. *Pet'r Ex. 4; Resp't Ex. F*. The Petitioner's representative testified that the Petitioner purchased the property with the intent to utilize it as a rental property. However, he never made an argument that the 2016 assessment should be based on the 2015 purchase price. Further, it was never established that the purchase was a valid market sale. The Board will not make a case for a petitioner. The Board bases its decision on the evidence presented and the issues raised during the hearing. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118-1119 (Ind. Tax Ct. 1998).

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.